



The Food Storage and Distribution Federation

RECOMMENDED CONDITIONS
FOR STORAGE SERVICES

&

RECOMMENDED CONDITIONS
FOR DISTRIBUTION SERVICES

2008 Issue



The Food Storage and Distribution Federation

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The Food Storage and Distribution Federation

The following pages contain our fully revised Recommended Conditions of Business for Storage Services and Recommended Conditions of Business for Distribution Services. Both sets of Conditions have been revised and updated by the FSDF's Legal Advisors to reflect the latest position in respect of applicable legislation and case law.

WE UNDERLINE THAT THE RECOMMENDED
CONDITIONS OF BUSINESS ARE FOR THE
EXCLUSIVE USE OF FSDF MEMBER
COMPANIES



The Food Storage and Distribution Federation

EFFECTIVE USE OF THE FSDF RECOMMENDED CONDITIONS FOR STORAGE SERVICES AND DISTRIBUTION SERVICES

Incorporated and used properly, the two sets of recommended conditions lay down sets of rules for the operation of your business. As is generally the case in life, playing according to those rules does not necessarily guarantee that your position will always be upheld but it is possible to guarantee you the best possible outcome in the event of there being a dispute. The purpose of this document is to establish, in effect, a code of practice to ensure that the recommended sets of conditions are not undermined and to clarify the thinking behind them.

This code does not purport to cover comprehensively each and every clause or every eventuality in business life. What it does is to focus on those matters where problems are most likely to arise.

INCORPORATION

You must ensure that the recommended conditions form part of your contract with your customer. Otherwise our conditions will be of no value to you whatsoever. Problems primarily arise with new customers where the first contract may be conducted orally by telephone. Ensure that your staff are trained specifically to draw the attention of new customers to the conditions and confirm this immediately in writing. For future business and existing customers, all company stationery, including quotations, invoices, faxes and emails should carry the following wording:-

"All business of this Company is transacted under the recommended conditions for storage and distribution services of the Food Storage and Distribution Federation, copies of which are available on request"

It is also prudent to ensure that your staff confirm in writing all quotations and/or contracts.

LIMITATION OF LIABILITY

It is always open to you to increase your level of liability to your customers either generally or in relation to specific customers or products. However, under our recommended conditions, your liability is limited to £250 per metric tonne for storage and £2,000 per metric tonne for distribution: see clause 11.7 in both sets of conditions. The difference in limit reflects the differing levels of risk for the two types of service. These limits will always be subject to satisfying the test of "fair and reasonable" under the Unfair Contracts Terms Act 1977 and they may also be overridden if any legislation is compulsorily applicable, e.g. for international movements where CMR, CIM, Hague-Visby or the Warsaw Convention may apply.

INSURING THE GOODS

Whilst it is always the case that you should have goods in transit liability insurance, under clause 11.8 the responsibility for taking out the normal form of marine insurance is left to your customer. This is the general division of responsibility we recommend although you may decide to opt for a different policy. However, if you do and then forget to insure, there is a risk you may not be able to invoke the limitation of liability in clause 11.7. Our recommendation, in any event, is that you should not under those circumstances offer to insure goods unless you hold an "Open Cover Marine Insurance Policy". This will minimise your risk. We also recommend that when negotiating such Cover, it should be agreed with your insurer that they will waive any rights of subrogation against you in the event of a claim.

CUSTOMER OBLIGATIONS

It is important to note that your customers give various warranties regarding such matters as ownership of goods as well as description, condition and packing. These can be particularly important when goods are collected, already secured, for example, in a container: see clause 4. Arising out of any breach by your customer are then the rights vested in you in clause 6 entitling you, amongst other things, either not to collect the goods, to reject them or to require them to be removed.

PAYMENT

Clearly payment for your services is crucial. To encourage prompt payment, provision is made in clause 10.5 for interest at 8% per annum over base to be added. Furthermore, when your customer may put forward some form of claim, counterclaim or set off in relation to a consignment, the customer is still duty bound to settle your invoices in full in accordance with the usual credit terms.

YOUR LIEN

This is a very important tool in your armoury for ensuring payment. Clause 15 (13 in the Distribution Conditions) gives you a general lien which therefore covers charges outstanding on previous consignments. Obviously this can only be exercised when the goods are still in your possession at the time monies are due. When exercising a lien, you should give notice to all parties. Before doing so, it is prudent to take legal advice. Otherwise you might find that someone who is not your customer is claiming title to the goods and that the true owner obtains a court order which can prove very expensive.

Also note that, if a customer goes into Administration, the right to invoke the lien is lost for that period of time although you can call upon the administrator to provide alternative security which can often have the same effect.

INSURANCE CLAIMS

Should a customer make a claim against you:-

1. Advise the customer to notify his own marine insurers. Also notify your goods in transit liability insurers immediately. Your policy will most probably contain a condition that you do so, and if you forget, your insurer may be able to walk away from the claim. See also what is said below under dispute resolution.

2. If sub-contractors were used, immediately notify them that you will be seeking an indemnity for any liability you may have.
3. Do not allow your customer to withhold payment of your outstanding invoices.
4. If you have, by agreement, insured the goods on behalf of your customer, immediately notify the marine risk insurers, as above.

DISPUTE RESOLUTION

Sadly, disputes will arise and if they get out of hand they can be expensive to resolve. Clause 18 (16 in the Distribution Conditions) makes it compulsory to attempt settlement before rushing off to arbitration. Do however make sure your insurers know this and follow their instructions, especially if the dispute is in relation to matters covered under the policy.

LAW AND JURISDICTION

The FSDF Conditions, and any contract into which they are incorporated, are governed by and construed in accordance with English law. However, any claim brought by a customer, goods owner or any other party, must be brought in the Courts where the Company/Member has its principal place of business, wherever that may be. For example, if your principal place of business is in Scotland and a customer, goods owner or any other party brings a claim against you, the proceedings must be commenced by the customer, goods owner or any other party in the Courts of Scotland. However, the dispute itself will be subject to the laws of England. The same applies if your principal place of business is in Ireland. The customer, goods owner or any other party must bring his claim before the Irish Courts, but it will still be subject to English law. However, the clause leaves you (the Member/Company) free to commence proceedings where the customer, goods owner or any other party has its principal place of business, thereby avoiding any potential problems of serving proceedings out of the English jurisdiction or seeking to enforce an English judgment in a foreign jurisdiction. Any such proceedings will still be subject to English law, unless an agreement to the contrary is reached with your customer, goods owner or any other party. The alternative is for the matter to be referred to Arbitration, but for this to be effective, all parties must agree to arbitrate any disputes.

SUMMARY

This memorandum is intended to improve your awareness of key provisions within the two sets of recommended conditions and to help you and your staff to incorporate and apply them. They are, however, issued for guidance only and do not have any contractual or legal effect. Should you require further advice or information on specific or general issues please contact the FSDF Offices.

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The Food Storage and Distribution Federation

Recommended Conditions For Storage Services

The FSDF Recommended Conditions for Storage Services are for the use of FSDF Member Companies only. Enquiries from non-member companies that may wish to use the Conditions of Business should be directed to the FSDF Chief Executive, tel: 0118 988 4468, fax: 0118 988 7035, e-mail: info@fsdf.org.uk

The Customer's attention is drawn specifically to conditions 5, 7 and 11 which exclude or limit the Company's and the Company's subcontractors' liability and require the Customer to indemnify the Company and/or its sub-contractors in certain circumstances. There are also strict time limits within which claims for loss or damage must be notified and proceedings brought.

To enable the Company to provide the Services to the Customer for the charges quoted the Company excludes and/or limits its liability for certain types of loss and damage and places a limit on any liability to the Customer.

The Company will not insure the Goods and the Customer and/or the Owner are advised to check their own insurance arrangements having regard to the limitations on the Company's liability and the indemnities being given by the Customer in the Conditions

1. DEFINITIONS

In these Conditions:

the "Company" means the person (whether a sole trader, partnership or company including its servants, employees and agents) undertaking the Services to which these Conditions apply;

the "Conditions " means these terms and conditions together with any schedule attached to them;

the "Contract" means any agreement by which the Company agrees to provide Services;

the "Customer" means the person contracting with the Company who may or may not also be the owner of the Goods but contracts on his own behalf and as agent for such owner and any person deriving title from such owner or otherwise having the right to possession of the Goods;

the "Owner" means the legal owner of the Goods (including any packaging, containers or equipment) who has been identified to the Company by the Customer as such and any other person who is or may become entitled to the Goods or possession of the Goods;

"Outside the Scope of the Services" includes, but is not limited to, any treatment which is not capable of performance save with unreasonable inconvenience or extra cost to the Company;

the "Goods " means the goods which are the subject of the Contract and includes pallets, palletainers, converters and all other equipment provided by the Customer;

the "Regulations" means the regulations and other literature (if any) published by the Company from time to time which describe the Services provided by the Company and regulate the provision of those Services and as notified to the Customer from time to time in writing. Any changes in such Regulations will be a variation of the Contract and shall take effect as a variation of the Contract immediately upon receipt by the Customer;

the "Services " means the storage (including space rental agreements, licences or similar) and ancillary services which the Company has agreed to provide or does provide for the Customer.

the "Value " means the cost of the Goods to the Customer or its principal at the time of receipt for the performance of the Services.

2. APPLICATION

2.1 These Conditions shall apply to every Contract for the provision of Services by the Company to the Customer to the exclusion of all other terms and conditions, including the Customer's own.

2.2

(a) The failure or delay by any party in exercising any right, power or remedy under these Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise of any right power or remedy under these Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

(b) Any waiver of a breach of, or default under any of the terms of these Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

3. THE SERVICES

3.1 The Company shall provide the Services subject to these Conditions and the Regulations.

3.2 The Company shall perform the Services with reasonable care and skill. Subject to Conditions 11 and 13.2 the Company accepts liability for loss of or for damage to Goods in its possession from the point at which they have been unloaded from the delivery vehicle and placed in the area of the Company's loading bay until such time as either:

(a) the Goods have been loaded on the collecting vehicle as directed by the Customer;
or

(b) the Goods are required to be removed under Condition 6 or Condition 14; whichever is the earlier.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer accepts these Conditions on its own behalf and as agent for and on behalf of the Owner and warrants to the Company that it has authority to bind such Owner to these conditions in all respects.

4.2 The Customer shall comply with the Regulations.

4.3 The Customer warrants that the Goods are as described to the Company in the consignment note or equivalent document particularly as regards to their nature, weight, quantity, condition and dimensions.

4.4 Without prejudice to Condition 7 below, the Customer warrants that the Goods (including any pallets) are:

- (a) in a wholesome condition;
- (b) properly packed for the performance of the Services;
- (c) in the form, and have at all material times been maintained at, the temperature as may be required by the minimum standards stipulated under the applicable statutory regime for goods of that type then in force; and
- (d) not require any special treatment outside the scope of the Services or as provided for in the Regulations.

4.5 The Company shall be entitled to reject Goods that are not in the condition set out in Condition 4.4.

5. SPECIAL TREATMENT

If Goods require special treatment outside the Scope of the Services of the Company then the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done and the Company is not notified of the need for such special treatment then the Company shall not be liable for any loss or damage to the Goods caused by failure to provide such special treatment.

6. GOODS IN UNACCEPTABLE CONDITION

If the Company determines that the Goods are not in a condition as required by Condition 4.4 or are likely not to be in such condition and such failure may or is likely to cause damage to other goods or property then;

- (a) the Company shall be entitled either not to collect the Goods or to reject the Goods;
- (b) the Company shall be entitled to serve notice on the Customer and upon receipt of such notice the Customer shall remove the Goods forthwith; or
- (c) if the Company is unable to give such a notice for any reason or if in the Company's reasonable opinion the Goods require immediate removal to avoid or mitigate damage or if the Customer fails to remove the Goods as required under Condition 6(b) then the Company may at the Customer's expense and risk arrange for alternative storage, disposal or destruction of the Goods.

7. CUSTOMER INDEMNITY

7.1 In the event that a third party brings a claim against the Company in respect of which these Conditions are held not to apply the Customer shall indemnify and hold harmless the Company and the Company's subcontractors against all claims and losses which exceed the liability and/or the limits of liability that the Company would have incurred had these Conditions applied.

7.2 The Customer shall indemnify and hold harmless the Company, its employees, agents and sub-contractors against all claims and losses (and all costs and expenses reasonably incurred relating thereto) occasioned by the nature or condition of the Goods save to the extent that the Company, its employees, agents or sub-contractors may be liable under these Conditions.

8. **RIGHT OF EXAMINATION**

The Company may, but shall not be obliged to, break bulk and open packages and examine the Goods when Goods are presented and at any time thereafter for the purposes of determining whether or not the Goods are in the condition required under Condition 4.4.

9. **STORAGE**

In the absence of agreement by the Company for any special treatment of the Goods pursuant to Condition 5, the Company:

9.1 May treat the Goods in such a way as in its opinion is best able to preserve them and the Company shall exercise reasonable skill and care in exercising its opinion.

9.2 Shall be entitled to store in bulk all Goods of apparently similar nature received from the same Customer and shall not be required to identify individual consignments of Goods so stored. If the Customer requires the Company not to store the Goods in bulk then the Company shall (if prepared to comply) be entitled to a reasonable upward adjustment of its charge for complying with such requirements.

10. **CHARGES**

10.1 The Company shall be entitled to payment of charges in accordance with rates agreed with the Customer, or in default thereof at its usual rates or a reasonable rate.

10.2 The Company may vary its charges at any time by giving written notice to the Customer.

10.3. The Company's charges shall be payable upon demand, by presentation of an invoice, unless otherwise agreed in writing. Where the Company agrees to provide a credit facility such facility shall always be provided on terms that the Company is entitled to withdraw the same with immediate effect in the event of the Customer's breach of the credit terms in respect of any one or more invoices or enters into any insolvency proceedings or otherwise seeks to make arrangements with its creditors.

10.4 Where the Company has agreed to fix its charges for a stated period the Company shall nevertheless be entitled to vary such charges in the event that during the period in which the charges are fixed there is an increase in the unit cost to the Company of its energy supply (including but not limited to gas, electricity, diesel or other fuel) which exceeds 5%. In such event the Company shall be entitled to pass on to the Customer the

actual increase in the Company's energy costs. If requested by the Customer the Company shall provide evidence of the unit cost at the date that the charges were fixed and evidence of the increase since that date

10.5 Interest shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) save that interest calculated at the rates prescribed by the Act shall be payable on all overdue amounts both before and after judgement.

10.6 The Customer shall pay to the Company all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.

10.7 The Customer will be charged a reasonable proportion, calculated by the Company, of any expenses necessarily incurred by the Company in complying with the Prevention of Damage by Pests Act 1949 (as amended or re-enacted from time to time) or in complying with any other statutory duties imposed from time to time in relation to the Goods provided that if the Goods are the direct cause of introduction of pests into the store the whole of the expenses of complying with the said Act shall be reimbursed by the Customer.

11. **LIMITATION OF LIABILITY**

11.1 The Company shall not be liable for any loss or damage that occurs because of:

- a) acts or omissions by the Customer which directly or indirectly result in loss or damage;
- b) strike, lock out, industrial dispute or other labour disturbance;
- c) factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment and/or
- d) any cause or event over which the Company has no control and which the Company is unable to prevent with the exercise of reasonable care and effort.

11.2 The Company shall not be liable for any loss or damage that occurs other than because of the Company's negligence, wilful misconduct or fraudulent act or omission.

11.3 In no event shall the Company be liable or responsible for indirect, incidental, special or consequential loss or damage, loss of profit, revenue or goodwill or anticipated savings of the Customer or Owner or any other party, howsoever caused, whether or not the Company was aware or should have been aware that such loss or damage may arise.

11.4 The Company shall have no liability for any claim made by the Customer unless such claim identifying the nature thereof is made within 7 days of the date upon which the Customer became or should have become aware of the event giving rise to such claim and unless a detailed claim giving details of the loss including weight, value and date of delivery into store is submitted by the Customer to the Company in writing within 14 days of the date aforesaid.

11.5 The limitations set out in this Condition shall not apply to death or personal injury caused by the negligence of the Company or resulting from the wilful misconduct or actionable default or fraudulent act or omission of the Company.

11.6 Except as expressly provided in these Conditions (and except where a person within the United Kingdom deals as a consumer within the meaning of the Unfair Contract Terms Act 1977) all other warranties, conditions and other terms implied by law are excluded.

11.7 In any event and subject to the rest of this Condition 11 and save where a higher limit is agreed in writing between the Company and the Customer, the Company's liability to the Customer, Owner or any other party with an interest in the Goods arising out of or in connection with the Services whether based in contract, tort (including negligence), bailment arising from statute or otherwise shall never exceed in the case of claims for loss or damage to the Goods or any other goods:

- (a) the Value of the Goods or goods lost or damaged; or
- (b) £250 per metric tonne of gross weight of the Goods or goods lost or damaged; whichever shall be the lesser.

11.8 The Company does not insure the Goods and the Customer shall be responsible for insuring

- (a) the Goods against all risks to their full insurable value and
- (b) any liabilities to the Company arising out of these Conditions.

11.9 No legal proceedings may be brought against the Company whether by a claim, counterclaim, Part 20 claim or otherwise unless they are issued and/or served within nine months of the event giving rise to the claim.

12. TRANSFER OF GOODS

12.1 Subject to Conditions 12.2 and 12.4 below the Company will transfer the Goods to another party ("Transferee") on receipt of written authorisation from the Owner or the Customer.

12.2 The transfer of the Goods will only occur when the Company has received from the Transferee a written notification of the Transferee's acceptance of these Conditions and the Regulations (together with any revised rate of charging referred to in the note to this Condition) stating that the Transferee shall be bound as if he were the original Customer.

12.3 The Transferee/or the Owner/or the Customer shall pay to the Company the reasonable costs of transferring the Goods.

12.4 The Owner or Customer guarantees payment to the Company of any charges accruing in respect of the Goods during the period of 14 days after the transfer and the Company shall be entitled to maintain any lien existing prior to the transfer.

(Note: Charges made to the Transferee will not necessarily be at the same rate as the charges to the original Customer).

13. **SUB-CONTRACTORS**

13.1 The Company may engage sub-contractors for the purpose of fulfilling the Contract in whole or in part and may transfer at its own expense any Goods between or within stores. The Company contracts for itself and as agent of and trustee for its sub-contractors and any such sub-contractors shall be entitled to the benefit of these Conditions and the Regulations and shall be under no greater liability than and in addition to that of the Company under the Conditions. The Customer agrees not to bring any claim against any sub-contractor additional to or in excess of the amount for which the Company is liable under these Conditions.

13.2 If the Customer requests that the Company arranges for another party to perform for the Customer any services other than the Services it does so on the terms that the Company acts as the agent of the Customer and is in no way responsible or liable to the Customer for the provision of these services.

14. **REMOVAL OF GOODS**

14.1 The Company may at any time give not less than 14 days' written notice to the Customer requiring the Customer to remove the Goods.

14.2 If the Goods are not so removed then the Company shall be entitled after the expiration of such notice (or with immediate effect if reasonably necessary) to give not less than 7 days' written notice of the Company's intention to sell the Goods and deduct from the proceeds all outstanding charges, any interest due, and the cost of disposal and upon the expiration of such further notice, so to deal (accounting to the Customer for the net proceeds of sale, if any, after such deductions).

15. **LIEN**

15.1 The Company shall be entitled to exercise a general lien on the Goods or any document relating thereto whilst they are in the Company's possession for all sums due at any time from the Customer or Owner as well as for sums which would have been due but for any unexpired credit period and shall be entitled to sell or dispose of the Goods as agent for and at the expense of the Customer or Owner and apply the proceeds in or towards payment of any such sums on 14 days notice in writing to the Customer.

15.2 When the Company accounts to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.

16. **NOTICES**

Notices given pursuant to these Conditions will be in writing and when delivered by post will be deemed to have been fully given and received two clear working days after posting (by pre-paid letter or by recorded delivery) and shall be sent to the registered office of the relevant party (in the case of a Company) or the last notified address (in any other instance). Notices given electronically or by facsimile will be deemed to have been received at the time of transmission.

17. **FORCE MAJEURE**

The Company shall not in any event be responsible for any delay in or failure to perform the Services which is caused by factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment.

18. **DISPUTE RESOLUTION**

The parties shall attempt in good faith to resolve any dispute arising out of any contract to which these Conditions apply promptly by negotiation between executives who have authority to settle the same and who are at a higher level of management than the persons with direct responsibility for administration of the contract. Any party may give to the other written notice of any dispute not resolved in the normal course of business which they require to be submitted to such negotiation. If within 30 days thereafter the executives of the parties have been unable to resolve matters the parties may agree that the dispute be referred to a single arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President for the time being of the Institute of Arbitrators in accordance with the provisions of the Arbitration Act 1996 (as amended or re-enacted from time to time). For the avoidance of doubt the Company's unpaid charges shall not be considered to be a dispute and the Company shall always be at liberty to commence proceedings before the competent court in respect of any unpaid charges.

19. **SEVERABILITY**

If any part of these Conditions is judged by any competent court or Arbitration Tribunal to be invalid or unenforceable, the remaining part or parts shall continue in full force and effect.

20. **ENTIRE AGREEMENT**

20.1 These Conditions and the Regulations set out the entire agreement between the Company and the Customer in relation to the matters to which they relate and the Customer hereby acknowledges that it has not relied upon any oral or written representations made to it by the Company, any of its employees, representatives or agents and there are no agreements, understandings, promises or conditions between the parties other than as set out in these Conditions and the Regulations.

20.2 The Customer irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation whether or not contained in these Conditions or for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently and/or to rescind any contract to which these Conditions apply.

21. **GOVERNING LAW**

These Conditions and any Contract to which they apply shall be governed by and construed in accordance with English law and any claim brought against the Company by the Customer, Owner or any other party (unless referred to Arbitration by agreement of the parties) shall be subject to the exclusive jurisdiction of the Courts where the Company has its principal place of business.

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Recommended Conditions For Distribution Services

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The Customer's attention is drawn specifically to conditions 5, 7 and 11 which exclude or limit the Company's and the Company's subcontractors' liability and require the Customer to indemnify the Company and/or its subcontractors in certain circumstances. There are also strict time limits within which claims for loss or damage must be notified and proceedings brought.

To enable the Company to provide the Services to the Customer for the charges quoted the Company excludes and/or limits its liability for certain types of loss and damage and places a limit on any liability to the Customer.

The Company will not insure the Goods and the Customer and/or the Owner are advised to check their own insurance arrangements having regard to the limitations on the Company's liability and the indemnities being given by the Customer in the Conditions.

1. DEFINITIONS

In these Conditions:

the "Company" means the person (whether a sole trader, partnership or company including its servants, employees and agents) undertaking the Services to which these Conditions apply;

the "Conditions" means these terms and conditions together with any schedule attached to them;

the "Consignor" means the person (who may or may not also be the Customer) who supplies the Goods to the Company for carriage;

the "Consignee" means the person (who may or may not also be the Customer) to whom the Goods are despatched for delivery by the Company;

the "Contract" means any contract agreement by which the Company agrees to provide Services;

the "Customer" means the person contracting with the Company who may or may not also be the owner of the Goods but contracts on his own behalf and as agent for such owner and any person deriving title from such owner or otherwise having the right to possession of the Goods;

the "Owner" means the legal owner of the Goods (including any packaging containers or equipment) who has been identified to the Company by the Customer as such and any other person who is or may become entitled to the Goods or possession of the Goods;

"Outside the Scope of the Services" includes, but is not limited to, any treatment which is not capable of performance save with unreasonable inconvenience or extra cost to the Company;

the "Goods" means the goods which are the subject of the Contract and includes pallets, palletainers, converters and all other equipment provided by the Customer;

the "Regulations " means the regulations and other literature (if any) published by the Company from time to time which describe the Services provided by the Company and regulate the provision of those Services and as notified to the Customer from time to time in writing. Any changes in such Regulations will be a variation of the Contract and shall take effect as a variation of the Contract immediately upon receipt by the Customer;

the "Services" means the distribution and ancillary services which the Company has agreed to provide or does provide for the Customer.

the "Value" means the cost of the Goods to the Customer or its principal at the time of receipt for the performance of the Services.

2. APPLICATION

2.1 These Conditions shall apply to every Contract for the provision of Services by the Company to the Customer to the exclusion of all other terms and conditions, including the Customer's own.

2.2

(a) The failure or delay by any party in exercising any right, power or remedy under these Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise of any right, power or remedy under these Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

(b) Any waiver of a breach of, or default under, any of the terms of these Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

3. THE SERVICES

3.1 The Company is not and does not contract as a common carrier. All Services are provided subject to these Conditions and the Regulations.

3.2 The Company shall perform the Services with reasonable care and skill.

3.3 Subject to Conditions 11 and 12.2 the Company accepts liability for loss of or for damage to Goods which have been received for the performance of the Services by the

Company from the time that the Customer or Consignor has completed loading the Goods on to the delivery vehicle until such time as:

- (a) commencement of the off loading of the Goods has been carried out by the Customer or Consignee at the point of delivery; or
- (b) the Goods are required to be removed under Condition 6; whichever is the earlier.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer accepts these Conditions on its own behalf and as agent for and on behalf of the Owner and warrants to the Company that it has authority to bind the Owner to these Conditions in all respects.

4.2 The Customer shall comply with the Regulations.

4.3 The Customer shall, if requested, sign a document acknowledging the receipt for carriage of Goods of the quantity and description and warrants that the Goods are as described to the Company in the consignment note or equivalent document particularly as regards to their nature, weight, quantity, condition and dimensions.

4.4 Without prejudice to Condition 7 below, the Customer warrants that the Goods (including any pallets) are:

- (a) in a wholesome condition;
- (b) properly packed for the performance of the Services;
- (c) in the form and be at, and have at all material times been maintained at, the temperature as may be required by the minimum standards stipulated under the applicable statutory regime of goods of that type then in force; and
- (d) not require any special treatment outside the scope of the Services or as provided for in the Regulations.

5. SPECIAL TREATMENT

If Goods require special treatment outside the Scope of the Services of the Company then the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done and the Company is not notified of the need for such special treatment then the Company shall not be liable for any loss or damage to the Goods caused by failure to provide such special treatment.

6. GOODS IN UNACCEPTABLE CONDITION

If the Company determines that the Goods are not in a condition as required by Condition 4.4 or are likely not to be in such condition and such failure may or is likely to cause damage to other goods or property then;

- (a) the Company shall be entitled either not to collect the Goods or to reject the Goods;

- (b) the Company shall be entitled to serve notice on the Customer and upon receipt of such notice the Customer shall remove the Goods forthwith; or
- (c) if the Company is unable to give such a notice for any reason or if in the Company's reasonable opinion the Goods require immediate removal to avoid or mitigate damage or if the Customer fails to remove the Goods as required under Condition 6(a) then the Company may at the Customer's expense and risk arrange for alternative storage, disposal or destruction of the Goods.

7. CUSTOMER INDEMNITY

7.1 In the event that a third party brings a claim against the Company in respect of which these Conditions are held not to apply the Customer shall indemnify and hold harmless the Company and the Company's subcontractors against all claims and losses which exceed the liability and/or the limits of liability that the Company would have incurred had these Conditions applied.

7.2 The Customer shall indemnify and hold harmless the Company, its employees, agents and sub-contractors against all claims and losses (and all costs and expenses reasonably incurred relating thereto) occasioned by the nature or condition of the Goods save to the extent that the Company, its employees, agents or sub-contractors may be liable under these Conditions.

8. RIGHT OF EXAMINATION

The Company may, but shall not be obliged to, break bulk and open packages and examine the Goods when Goods are presented and at any time thereafter for the purposes of determining whether or not the Goods are in the condition required under Condition 4.4.

9. STORAGE

In the absence of agreement by the Company for any special treatment of the Goods pursuant to Condition 5, the Company may treat the Goods in such a way as in its opinion is best able to preserve them and the Company shall exercise reasonable skill and care in exercising its opinion. Any and all charges occasioned thereby will be for the account of the Customer.

10. CHARGES

10.1 The Company shall be entitled to payment of charges in accordance with rates agreed with the Customer, or in default thereof at its usual rates or a reasonable rate.

10.2 The Company may vary its charges at any time by giving written notice to the Customer.

10.3 The Company's charges shall be payable upon demand, by presentation of an invoice, unless otherwise agreed in writing. Where the Company agrees to provide a credit facility such facility shall always be provided on terms that the Company is entitled to withdraw the same with immediate effect in the event of the Customer's breach of the credit terms in respect of any one or more invoices or enters into any insolvency proceedings or otherwise seeks to make arrangements with its creditors.

10.4 Where the Company has agreed to fix its charges for a stated period the Company shall nevertheless be entitled to vary such charges in the event that during the period in which the charges are fixed there is an increase in the unit cost to the Company of its energy supply (including but not limited to gas, electricity, diesel or other fuel) which exceeds 5%. In such event the Company shall be entitled to pass on to the Customer the actual increase in the Company's energy costs. If requested by the Customer the Company shall provide evidence of the unit cost at the date that the charges were fixed and evidence of the increase since that date.

10.5 Interest shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) save that interest calculated at the rates prescribed by the Act shall be payable on all overdue amounts both before and after judgement. .

10.6 The Customer shall pay to the Company all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.

11. **LIMITATION OF LIABILITY**

11.1 The Company shall not be liable for any loss or damage that occurs because of:

- (a) acts or omissions by the Customer which directly or indirectly result in loss or damage;
- (b) strike, lock out, industrial dispute or other labour disturbance;
- (c) factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment and/or
- (d) any cause or event over which the Company has no control and which the Company is unable to prevent with the exercise of reasonable care and effort.

11.2 The Company shall not be liable for any loss or damage that occurs other than because of the Company's negligence, wilful misconduct or fraudulent act or omission.

11.3 In no event shall the Company be liable or responsible for indirect, incidental, special or consequential loss or damage, loss of profit, revenue or goodwill or anticipated savings of the Customer or Owner or any other party, howsoever caused, whether or not the Company was aware or should have been aware that such loss or damage may arise.

11.4 The Company shall have no liability for any claim made by the Customer unless such claim identifying the nature thereof is made within 7 days of the date upon which the Customer became or should have become aware of the event giving rise to such claim and unless a detailed claim giving details of the loss, including weight volume and date of collection is submitted by the Customer to the Company in writing within 14 days of the aforementioned date.

11.5 The limitations set out in this Condition shall not apply to death or personal injury caused by the negligence of the Company or resulting from the wilful misconduct or actionable default or fraudulent act or omission of the Company.

11.6 Except as expressly provided in these Conditions (and except where a person within the United Kingdom deals as a consumer within the meaning of the Unfair Contract Terms Act 1977) all other warranties, conditions and other terms implied by law are excluded.

11.7 In any event and subject to the rest of this Condition 11 and save where a higher limit is agreed in writing between the Company and the Customer, the Company's liability to the Customer, Owner or any other party with an interest in the Goods arising out of or in connection with the Services whether based in contract, tort (including negligence), bailment arising from statute or otherwise shall never exceed in the case of claims for loss or damage to the Goods or any other goods:

- (a) the Value of the Goods or goods lost or damaged; or
- (b) £2000 per metric tonne of gross weight of the Goods or goods lost or damaged, whichever shall be the lesser.

11.8 Subject to the rest of this Condition 11 the Company's liability for loss or damage as a result of failure to deliver or arrange to deliver the Goods in a reasonable time shall never exceed the amount of the Company's charges in respect of the carriage in question.

11.9 The Company does not insure the Goods and the Customer shall be responsible for insuring:

- (a) the Goods against all risks to their full insurable value and
- (b) any liabilities to the Company arising out of these Conditions.

11.10 No legal proceedings may be brought against the Company whether by a claim, counterclaim, Part 20 claim or otherwise unless they are issued and/or served within nine months of the event giving rise to the claim.

12. **SUB-CONTRACTORS**

12.1 The Company may engage sub-contractors for the purpose of fulfilling the Contract in whole or in part and may transfer at its own expense any Goods between or within stores. The Company contracts for itself and as agent of and trustee for its sub-contractors and any such subcontractors shall be entitled to the benefit of these Conditions and the Regulations and shall be under no greater liability than and in addition to that of the Company under these Conditions. The Customer agrees not to bring any claim against any sub-contractor additional to or in excess of the amount for which the Company is liable under these Conditions.

12.2 If the Customer requests that the Company arranges for another party to perform for the Customer any services other than the Services it does so on the terms that the Company acts as the agent of the Customer and is in no way responsible or liable to the Customer for the provision of these services.

13. **LIEN**

13.1 The Company shall be entitled to exercise a general lien on the Goods or any document relating thereto whilst they are in the Company's possession for all sums due at any time from the Customer or Owner as well as for sums which would have been due but for any unexpired credit period and shall be entitled to sell or dispose of the Goods as agent for and at the expense of the Customer or Owner and apply the proceeds in or towards payment of any such sums on 14 days' notice in writing to the Customer.

13.2 When the Company accounts to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.

14. **NOTICES**

Notices given pursuant to these Conditions will be in writing and when delivered by post will be deemed to have been fully given and received two clear working days after posting (by pre-paid letter or by recorded delivery) and shall be sent to the registered office of the relevant party (in the case of a Company) or the last notified address (in any other instance). Notices given electronically or by facsimile will be deemed to have been received at the time of transmission.

15. **FORCE MAJEURE**

The Company shall not in any event be responsible for any delay in or failure to perform the Services which is caused by factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment.

16. **DISPUTE RESOLUTION**

The parties shall attempt in good faith to resolve any dispute arising out of any contract to which these Conditions apply promptly by negotiation between executives who have authority to settle the same and who are at a higher level of management than the persons with direct responsibility for administration of the contract. Any party may give to the other written notice of any dispute not resolved in the normal course of business which they require to be submitted to such negotiation. If within 30 days thereafter the executives of the parties have been unable to resolve matters the parties may require the dispute to be referred to a single arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President for the time being of the Institute of Arbitrators in accordance with the provisions of the Arbitration Act 1996 (as amended or re-enacted from time to time). For the avoidance of doubt the Company's unpaid charges shall not be considered to be a dispute and the Company shall always be at liberty to commence proceedings before the competent court in respect of any unpaid charges.

17. **SEVERABILITY**

If any part of these Conditions is judged by any competent court or Arbitration Tribunal to be invalid or unenforceable, the remaining part or parts shall continue in full force and effect.

18. **ENTIRE AGREEMENT**

18.1 These Conditions and the Regulations set out the entire agreement between the Company and the Customer in relation to the matters to which they relate and the Customer hereby acknowledges that it has not relied upon any oral or written representations made to it by the Company, any of its employees, representatives or agents and there are no agreements understandings promises or conditions between the parties other than as set out in these Conditions and the Regulations.

18.2 The Customer irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation whether or not contained in these Conditions or for breach of any warranty not contained in these Conditions unless such misrepresentation or Warranty was made fraudulently and/or to rescind any contract to which these Conditions apply.

19. **GOVERNING LAW**

These Conditions and any Contract to which they apply shall be governed by and construed in accordance with English law and any claim brought against the Company by the Customer, Owner or any other party (unless referred to Arbitration by agreement of the parties) shall be subject to the exclusive jurisdiction of the Courts where the Company has its principal place of business.

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